



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1224]

Certain Digital Video-Capable Devices and Components Thereof; Commission Determination to Review a Final Initial Determination Finding No Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”). The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission also extends the target date for completion of the investigation until March 23, 2022.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the present investigation on October 22, 2020, based on a complaint and supplement thereto filed by Koninklijke Philips N.V. of Eindhoven, Netherlands and Philips North America LLC of Cambridge, Massachusetts (collectively, “Philips”). 85 FR 67373–74 (Oct. 22, 2020). The complaint, as supplemented,

alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation, sale for importation, and sale in the United States after importation of certain digital video-capable devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,436,809 (“the ’809 patent”); 9,590,977 (“the ’977 patent”); 10,091,186 (“the ’186 patent”); and 10,298,564 (“the ’564 patent”). *Id.* at 67373. The complaint further alleged that an industry in the United States exists or is in the process of being established, as required by section 337. *Id.* The notice of investigation named the following respondents: Dell Technologies Inc. of Round Rock, Texas and Dell Inc. of Round Rock, Texas (together “Dell”); Hisense Co. Ltd. of Qingdao, China, Hisense Visual Technology Co., Ltd. of Qingdao, China, Hisense Electronics Manufacturing Company of America Corporation of Suwanee, Georgia, Hisense USA Corporation of Suwanee, Georgia, Hisense Import & Export Co. Ltd. of Qingdao, China, Hisense International Co., Ltd. of Qingdao, China, Hisense International (HK) Co., Ltd. of Sheung Wan, Hong Kong (SAR), and Hisense International (Hong Kong) America Investment Co., Ltd. of Sheung Wan, Hong Kong (SAR) (together, “Hisense”); HP, Inc. of Palo Alto, California (“HP”); Lenovo Group Ltd. of Quarry Bay, Hong Kong (SAR) and Lenovo (United States), Inc. of Morrisville, North Carolina (together, “Lenovo”); LG Electronics, Inc. of Seoul, Republic of Korea and LG Electronics USA, Inc. of Englewood Cliffs, New Jersey; TCL Industries Holdings Co., Ltd., of Guangdong, China, TCL Electronics Holdings Ltd. of Hong Kong Science Park, Hong Kong (SAR), TCL King Electrical Appliances (Huizhou) Co. Ltd. of Huizhou, China, TTE Technology, Inc. of Corona, California, TCL Moka International Ltd. of Sha Tin, Hong Kong, TCL Moka Manufacturing S.A. de C.V. of Tijuana, Mexico, TCL Smart Device (Vietnam) Company Ltd. of Binh Duong, Vietnam; MediaTek Inc. of Hsinchu, Taiwan and MediaTek USA Inc. of San Jose, California; Realtek Semiconductor Corp. of Hsinchu, Taiwan (“Realtek”); and Intel Corporation of Santa Clara, California (“Intel”). *Id.* at 67374. The Office of Unfair Import Investigations (“OUII”) is participating in the investigation. *Id.*

During the course of the investigation, Philips moved to terminate the investigation as to various claims, patents, and respondents. *See* Order No. 19, *unreviewed by* Comm’n Notice (Apr. 15, 2021), Order No. 21, *unreviewed by* Comm’n Notice (May 12, 2021), Order No. 26, *unreviewed by* Comm’n Notice (Jun 21, 2021), Order 32, *unreviewed by* Comm’n Notice (July 26, 2021), Order No. 40, *unreviewed by* Comm’n Notice (Aug. 2, 2021), and Order No. 46, *unreviewed by* Comm’n Notice (Aug. 10, 2021). The Respondents remaining in the investigation are Dell, Hisense, HP, Lenovo, TCL, Realtek, and Intel (together, “the Respondents”). The remaining asserted patent claims are: claims 1, 9, 11, 12, and 14 of the ’186 patent; and claims 1, 18, 19, 21, and 25 of the ’564 patent.

On October 21, 2021, the ALJ issued the subject ID. On November 2, 2021, Philips and OUII each filed petitions for review. Also, on November 2, 2021, Respondents Intel, Dell, and Lenovo filed a contingent petition for review and Respondents HP, Realtek, Dell, Lenovo, Hisense, and TCL (“Receiver Respondents”) filed a separate contingent petition for review. On November 10, 2021, Philips, OUII, and the Respondents each filed replies.

Having reviewed the record of the investigation, including the final ID, the parties’ submissions to the ALJ, and the petitions for review and replies, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID’s findings on claim construction, infringement, validity, and domestic industry for both of the ’186 and ’564 patents.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

- (1) Please discuss whether the evidence establishes that the claimed “certificate” of the accused products and domestic industry products indicates that the second device is compliant with at least one compliance rule. In your discussion, please address the specific compliance rule(s) at issue and specifically how the certificate indicates that the second device is compliant with the compliance rule(s). Please address the evidence in the contexts of both the ’186 and ’564 patents.

- (2) Does any of the information contained within the alleged “certificate” of the accused products or domestic industry products [[
]]? *See, e.g.*, ID at 73-75.
- (3) Should “when,” as recited in the asserted claims, be interpreted to mean “when and only when”? *See* Complainants’ Petition for Review at 23. Did Complainants waive their argument that the accused products infringe if “when” is construed to mean “when and only when”? Please address the intrinsic record in your response and any relevant Federal Circuit case law.
- (4) Discuss the capabilities of the accused receiver products (and the domestic industry products, if relevant) and whether they have instructions arranged to receive protected content only when the claimed conditions are satisfied (*i.e.*, [[
]]).
- (5) Please address whether the “predetermined time” limitations of the asserted claims are met if “predetermined time” is construed as “a time interval selected to ensure that the first and second communication devices are sufficiently near one another to permit access to the protected content.” *See, e.g.*, Receiver Respondents Petition for Review at 18. Please address this question both for infringement and the technical prong of domestic industry.
- (6) Please discuss whether the Commission should apply the America Invents Act (“AIA”) or pre-AIA statute in evaluating Respondents’ validity challenges and in determining the proper priority date.
- (7) If the Commission determines that the ID, in addressing domestic industry, properly considered labor investments only for 2020 (*see* ID at 143-149):
 - a. What is the proper allocation percentage that should be applied? Please support your argument with citations to record evidence.
 - b. Can data on one year of investments support the significance of an industry that is already established? Please support your argument with reference to the statute and any relevant Commission and judicial precedent.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks

exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy, the public interest, and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's

consideration. Complainant is further requested to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on January 7, 2022. Reply submissions must be filed no later than the close of business on January 14, 2022. Opening submissions are limited to 60 pages. Reply submissions are limited to 35 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1224) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission extends the target date for completion of the investigation to March 23, 2022.

The Commission vote for this determination took place on December 20, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: December 20, 2021.

Lisa Barton,

Secretary to the Commission.

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